IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kalu Ram. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 630/2006
against the order dated 4-2-2006 passed
by the Addl. District Judge No.1, Bikaner,
in Criminal Revision No. 45/2004.

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Date of Order: November 06, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.C. Bishnoi, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 4-2-2006 passed by the Additional Sessions Judge No.1, Bikaner (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 45/2004, whereby the revision petition filed by the petitioner against the order dated 6-2-2004 passed by the Judicial Magistrate, Nokha, district Bikaner (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the

orders passed by the courts below.

It is contended by the learned counsel for the petitioner that the trial Court fell in error in framing the charges against the petitioner without there being a prima facie and reliable evidence against him and the Revisional Court also failed to consider the material on record and simply on the basis of statements of witnesses, who were otherwise not the witnesses to the occurrence even as per the injured-complainant, affirmed the order passed by the trial Court framing the charges against the petitioner.

I have carefully gone through the statements of three injured persons, viz. Bhanwar Lal, Har Chand and Ranjeet Ram, who suffered the injuries in the occurrence. These three injured persons, in their whole of the statements under Section 161 of the Code as well as in the Parcha-Bayan of injured Bhanwar Lal, the petitioner has not been named out as the assailant, so much so that even his presence has not been shown at the place of the occurrence. The occurrence is dated 31-3-2993 and the statement of injured Bhanwar Lal was recorded soon after the occurrence by the police. In whole of his statement, the presence of the present petitioner has not been shown by the injured. The statements of other who injured persons, viz. Har Chand and Ranjeet Ram were recorded by the police on 17-3-2003 as per the date mentioned in the

statements of these two persons. It appears that the police officer who recorded the statements of these two injured persons under Section 161 of the Code, has not correctly mentioned the date. When the occurrence itself took place on 31-3-2003 and the report was lodged on the very day, the statements of the aforesaid two injured could not have been recorded on 17-3-2003 and it may be 17-4-2003 as is evident from the other documents on record, like site inspection note, which was prepared on 4-4-2003. These two injured persons have not named the present petitioner. The other witness Bhar Mal has also not named out the petitioner. So also is the case of alleged eye witness Banshi Lal. However, somewhere on 20-6-2003, the police recorded the statements of two witnesses, viz. Ram Karan and Banwari, who, even according to the complainant-injured, were not the witnesses to the occurrence, but they stated that the present petitioner was also present at the time of the occurrence. Be that as it may, the statements of these two witnesses, who, according to the prosecution, are not the witnesses to the occurrence, are hardly of any evidentiary value keeping in view the statements of the injured and the eye witnesses. According to the prosecution case, the present petitioner was not present at the place of the occurrence and did not participate in the occurrence. Even if the prosecution case is taken as such on its face value, without being controverted,

there cannot be conviction of the present petitioner for the offences, for which he has been charged. Therefore, the trial Court as also the Revisioinal Court fell in error in not considering the material on record in right perspective while framing the charge against the present petitioner and, therefore, the impugned orders, qua the petitioner, deserve to be set aside.

The criminal miscellaneous petition is, therefore, allowed; the orders impugned passed by both the courts below are set aside and the petitioner is discharge the offences, for which he has been charged. The stay petition also stands disposed of.

(H.R. PANWAR), J.

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